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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 SEP 26 PM 12:41 ✓

SANDRA KOTTEHAM, CLERK
BY: 

ARIZONA SUPERIOR COURT
YAVAPAI COUNTY

STATE OF ARIZONA,

No. P1300CR201001325
aka 20081339 (dismissed)

Plaintiff,

Vs.

RESPONSE TO MOTION TO
MODIFY RELEASE
CONDITIONS

STEVEN CARROLL DEMOCKER

Defendant,

REQUEST TO RESCIND
IN FORMA PAUPERIS
& INDIGENCY STATUS

MOTION FOR ADDITIONAL
FINANCIAL RECORDS

Intervener pro per William E. (Bill) Williams respectfully requests the Court act on his Response to Defendant's Motion, Rescind the Defendant's *in forma pauperis* and Indigent status, and order the production of new documents. As grounds for the motion, Intervener states:

I. RESPONSE TO DEFENDANT'S MOTION TO MODIFY RELEASE CONDITIONS.

A. Defendant has Motioned the Court to modify his jail and release conditions.

Testimony and evidence clearly shows the Defendant has the capability and the plan to run from Yavapai County. Evidence ad nauseum resides in the Court's possession regarding GPS mapping, a quick run rucksack, hidden passports, and the computer evidence regarding how to disappear from site or how to acquire a new identity. None of

the parties dispute this. Therefore, the Defendant is a flight risk and should stay in the County jail.

B. Regarding solitary confinement – it appears he has paid his debt to society for whatever he allegedly did in the jail, so let the defendant go back to “normal” living conditions in which most of inmates reside; and let the Defendant have normal visitation, by phone or in person. This long in solitary confinement smacks of cruel and unusual punishment.

II. REDUCING CASH BOND AND RESCINDING INDIGENCY

A. If the cash bond is to be reduced to \$250,000 secured bond as requested by the Defense team’s most recent motion, then a full financial accounting should be commenced utilizing points raised in this Intervener’s August Motion for Financial Records; this Court should take judicial notice of the list of authorities and argument in that Motion in the interest of judicial economy here. Intervener urges this Court to dispose of the matters in his August Motion.

BACKGROUND

This Court accepted Intervener’s August 26, 2011 Motion for Financial Records and by his attestation, Intervener claims all points as true and verifiable. In addition, Intervener hereby attests to the truthfulness in his published investigative article found at:

<http://www.examiner.com/headlines-in-phoenix/arizona-murder-suspect-had-financial-investigators-breathing-down-his-neck> which was originally posted September 7, 2011 and has been edited and is attached as Exhibit 1.

ARGUMENT FOR RESCINDING IN FORMA PAUPERIS OR INDIGENCY STANDING

This Defendant is making a laughing stock of this County Court by insisting on additional funds to appoint psychiatrists, investigators and experts because he is benefiting without showing indigency.

Hearings in this case on financial statements of the Defendant have been sham hearings without considering Defendant's global financial status and a new hearing or reconsideration is in order.

New evidence of Defendants finances had light shown on it in Intervener's report cited above. (That report has heavy citations and attributions to multiple sources this court can contact for opinion).

The new evidence. A) DeMocker received a \$500,000 transition package from UBS; B) DeMocker took \$89,000 from community funds when his ex-wife filed for divorce; C) \$948,000 is missing from his stock brokerage clients; D) \$770,000 in life insurance proceeds collected by DeMocker, or his family, are unaccounted for.

Assuming my news article to be true... A defendant who has some financial resources available to pay a portion of the legal expenses at or near the time they accrue is not "indigent" within the legal definition of that term, but is perhaps better described as "quasi-indigent." Although Ariz. R. Crim. P. 6.7(d) does require off-set contributions from defendants who can pay part, but not all, of their legal expenses without hardship, it does not impair the defendant's right to counsel. If in determining that a person is indigent under Rule 6.4(a), the court finds that such person has financial resources which enable him to offset in part the costs of the legal services to be provided, the court shall order him to pay to the appointed attorney or the county, through the clerk of the court, such amount as it finds he is able to pay without incurring substantial hardship to himself or to his family. And the limitation imposed by A.R.S. § 11-584(B) does not restrict the

court's authority to order partial payment of legal expenses from those who are quasi-indigent. See Espinoza v. Superior Court, 166 Ariz. 557, 804 P.2d 90, (1991).

Granted, the Sixth Amendment guarantees indigent criminal defendants the right to counsel. However, the burden is on a defendant to come forward with evidence to prove his indigency. United States v. Krzyske, 836 F.2d 1013, 1018-1019 (6th Cir. 1998). The *Krzyske* court found that "it was not error for the district court to find no indigency where the defendant declined to supply additional information to the court unless the proceedings were held in camera and without the government's participation."

It's time for this Court to provide evidence of the Defendant's indigency.

Trial judges should discuss all factors considered in mitigation. State v. Wallace, 160 Ariz. 424, 427, 773 P.2d 983, 986 (1989).

Rule 6.4 prescribes the procedures for determining indigency and rules 6.5, 6.6, and 6.7 define the procedures for appointing and compensating appointed counsel and this Court has not adhered to those rules, nor has it ordered the release of DeMocker's Book of Business motioned for by this Intervener.

Osborn and Maledon (the original defense firm) published, on their own blog site on August 18, 2009 (well after their defense in this case began) that Tripati v Tucker, 222 Ariz. 372 (2009) was instructional in similar cases: the court shall grant an application for deferral of court fees and costs if the applicant establishes by affidavit, including supporting documentation, that the applicant "permanently unable to pay" means the applicant's income and liquid assets are insufficient or barely sufficient to meet the daily essentials of life and the income and liquid assets are unlikely to change in the foreseeable future. This was a civil case, but if Osborn and Maledon put their signature on the premise, then we must examine the affidavit with utmost scrutiny in this case.

In addition, both defense teams should have known better, with Larry Hammond opining in law review articles and sitting on Arizona's Indigent Representation Committee.

But the problem is Defendant DeMocker has filed no affidavit, only a scant hand written questionnaire full of more questions than answers, if we take the Examiner news site's report as accurate and true.

The defendant has failed to submit proof of indigency and his attorneys should be cautioned by this Court. See IN THE MATTER OF A SUSPENDED MEMBER OF THE STATE BAR OF ARIZONA, Supreme Court No. SB-02-0131-D, 2002 Ariz. LEXIS 222

The Supreme Court of Arizona has defined substantial evidence to mean more than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. The record in this case lacks such proof of indigency and Intervener's reports show enough prima facie evidence that DeMocker has money so as to re-open the litigation on indigency, and reconsider it.

Arizona Rules of Criminal Procedure, Rule 6.4 spells out the issue for determination of indigency. Under this rule, DeMocker may have volunteered an affidavit or questionnaire claiming he is a person who is not financially able to employ counsel, but section C of the Rule allows for reconsideration; it can occur after a determination of indigency or non-indigency has been made, if there has been a material change in circumstances. Intervener hereby claims material changes by way of new evidence in his investigative report: \$2.3 million was at his disposal from the time his wife began her divorce petition to the time DeMocker was incarcerated on murder

charges. And there was tangible property owned by DeMocker which could have been sold.

To avoid abuse of the statute, litigation in forma pauperis should be restricted to those who are clearly entitled to it. 20 Am Jur 2d Costs § 98.

The court's discretion in waiving fees or costs in an appropriate case should be exercised with a view to confining the privilege to those who have a substantial right to enforce or preserve but are absolutely unable otherwise to do so, but this Court has only a flimsy hand written attestation by Mr. DeMocker and this Intervener claims DeMocker has no substantial right to proceed in indigent status.

New evidence in the Examiner article and copious records in this trial show bad faith or a plainly frivolous claim of indigency; totally without merit, and the basis of legal positions asserted by the applicant are frivolous or malicious. 20 Am Jur 2d Costs § 102. This Court is bound by law to show where the money is and it has not.

III. MOTION FOR ADDITIONAL FINANCIAL RECORDS.

Intervener requested of Court Administrator Dean Trebesch an accounting of the total amount of money spent on the Defendant's defense by tax payers. Mr. Trebesch had sent Intervener a copy of the Contract for services between Defendant, Mr. Parzych and Mr. Craig Williams, but upon this new request for an accounting of total costs to date, Mr. Trebesch left a message on Intervener's telephone machine claiming he wasn't sure he could release those details. This Court should order the release of those records for Public Right to Know and Freedom of the Press reasons.

A.R.S. § 13-4013: If counsel is appointed by the court and represents the defendant in either a criminal proceeding or insanity hearing, counsel shall be paid by the county in which the court presides; Rule 6.5(c): provide appointed counsel and pay such

counsel reasonable and equitable compensation. The Intervener believes the payment is public record and the county (even the Treasurer) should disclose it.

REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully moves the Court to:

- 1 Order the County Treasurer or Dean Trebesch to release to Intervener the total cost to date that the County has been billed for DeMocker's defense.
2. Hold a reconsideration hearing regarding indigency.
3. Order the Defense to show proof of indigency by affidavit and exhibits.
4. Accept new evidence regarding no indigency in Intervener's article.
5. Do Not reduce bail, or cash bond, but Do release Defendant from solitary confinement.
6. Or set a hearing on these matters.

Respectfully Submitted



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I certify that a copy of the foregoing was delivered to:

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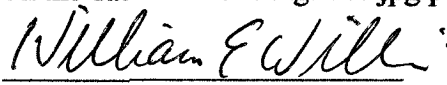
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on the date of this filing. See jpg/pdf of file stamp.


William E. (Bill) Williams



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EXHIBIT 1

Arizona murder suspect also lost money for UBS

By Bill Williams, Phoenix Headlines Examiner

Rogue stock traders have lost the Union Bank of Switzerland (UBS) nearly \$7 Billion in the last few years and one of them is sitting in a Yavapai County Arizona jail cell awaiting trial on murder charges

But just like UBS got some good news - its Chief Executive Officer Oswald Gruebel is resigning and the Board of Directors is overhauling the bank - murder defendant and former UBS staffer Steven DeMocker got some good news

The Prescott Arizona stockbroker has been jailed since October 2008, charged with murdering his ex-wife, Carol Kennedy, on the eve of his first \$6,000 alimony dues.

Several of his Prescott customers filed complaints with a quasi governmental organization stating that he owes them more than a million dollars And just when it seemed like it could not get any worse, the good news came - some of the former customers settled out of court

People like "Joe" a fictitious name for a real Prescott businessman Although he wouldn't speak to me candidly without his attorney's approval, his complaint alleges DeMocker cannot account for \$200,000 from Joe's accounts. Joe, his wife, their IRA, a trust set up for future generations and even a child, had their life savings dashed "Steven was an unusual person, possibly a psychopath," said Joe

A Prescott psychiatrist and his wife, close to retirement, may not see those golden years so golden They allege their account, set up by DeMocker at the 150-year-old UBS in 2005, has no funds in it

Advertisement

Ten Prescott residents from all walks of life filed a complaint with the Financial Industry Regulatory Authority (FINRA) A UBS spokeswoman claims they settled for an undisclosed amount a few weeks ago, prior to arbitration, but a FINRA spokesperson says they are still negotiating

Even with the good news of settling, presumably for less than what he owed, the question of where the money went remains unanswered

The Prescott Ten allege that DeMocker began losing money on their accounts just prior to his arrest for murder and they want some money back before DeMocker potentially goes away for life

Their complaint didn't pull any punches In case number 10-03803, his former customers charged DeMocker and his employer UBS with negligence, securities fraud, negligent misrepresentation, negligent supervision, fraud, violations of FINRA conduct rules, violations of three Arizona securities statutes and violation of the U S Securities Act

Part of the losses, the Prescott Ten allege, came when DeMocker packaged structured products out of Lehman Brothers securities Just prior to DeMocker's arrest for murder Lehman Brothers filed for what became the largest bankruptcy filing in U S history

The FINRA complaint alleges DeMocker was purchasing unsecured notes but not telling his customers of the risk The deal allegedly loaned customer money to Lehman Brothers at a higher interest rate than what the customers would make And the complaint said UBS and DeMocker failed to disclose to the Prescott Ten that they could lose all their money

The complaint went on to say, "Mr DeMocker failed to explain to clients that he was under significant financial distress (during the divorce and murder investigation) which compromised his ability to objectively make client recommendations "

DeMocker may have caught another small break

UBS appears to have provided legal counsel for him - Payne Templeton, a Long Beach, California attorney who works for a large law firm, hired by UBS. Templeton filed a predictable response saying the Prescott Ten had no claims required for punitive damages, the claims are not supported by fact or law, the investors failed to check their investments on a regular basis and their losses were caused by forces outside the control of UBS

Templeton's response said that UBS has a reasonable system of supervision of advisors who did nothing wrong and that UBS fulfilled its duty and made true and accurate statements. In addition, Templeton denied allegations that UBS failed to supervise DeMocker or anyone else in the Prescott office.

The attorney for the Prescott Ten, Alan Baskin of Tempe, Arizona did not reply to questions mailed to him by this reporter, but in April 2011, Baskin requested the production of documents for the Lehman Brothers structured products, telephone records, emails and reports on all securities and investments related to the case

Templeton did not return phone calls but UBS spokeswoman Karina Byrne did

"With regard to the arbitration case, it is the kind of sales practice case that is fairly typical in the industry and we settled it on terms (acceptable) to both parties," Byrne said. "This case is fairly typical, but what is not typical is the personal and criminal aspects in this one."

According to Byrne, the head of media relations for UBS's New York office, there have been dozens of cases brought forward involving Lehman Brothers structured products and there may be on the order of hundreds of cases of alleged securities fraud brought each year. "We prefer none at all, but arbitration is an opportunity for both sides to sit before a panel and settle."

Byrne clarified, "The FINRA arbitration hearing was scheduled to take place in Phoenix, but as both parties settled last month, there was no final hearing on the matter and no ruling from the arbitration panel."

The claimants strategy would have rolled out the whole ugly background about how Steven DeMocker including financial statements and divorce settlement papers alleging a lavish lifestyle – chasing women, keeping residences in Phoenix and Prescott, three BMWs, two motorcycles, GPS maps of Mexico - that was costing him \$30,000 per month while he was only bringing in \$17,000 a month. It is unclear if that strategy was rolled out during arbitration or if the settlement precluded it.

UBS sent out a 43-page dress code for men and women staffers last year. Preserve the shape of your dark colored suits, avoid gaudy jewelry, and schedule a barber every four weeks were recommended. DeMocker wears a dark colored suit, handcuffs and a prison coil to court hearings.

DeMocker worked for UBS from September 2004 to April 2009 – a full six months after his arrest. Steven and Carol's last joint tax return from 2006 shows an income of \$374,000, a 2005 return shows \$315,000 and a 2004 return shows \$301,000. Their divorce papers were prepared by Prescott attorney Anna Young who has recently been appointed a county judge, and the supervising judge in the current murder trial signed off on the papers.

Even while Judge Young was working on the divorce, DeMocker was juggling multiple girlfriends while paying \$4,000 a month on Carol's first and second mortgages, \$10,000 a month in services on their joint debt and thousands for one daughter's education at Occidental College near Los Angeles. Six credit cards showed a debt of \$103,000.

One of DeMocker's girlfriends is mentioned in Baskin's paperwork, and in reports from the Yavapai County Sheriffs and the Yavapai County prosecutors. Prescott resident Barbara O'Non worked with DeMocker for nine years. In 1999 she began working as his assistant at A.G. Edwards. DeMocker started working for them in 1995. He had graduated from Prescott College in 1977 and worked as some sort of financial expert at Prescott College prior to working for A.G. Edwards. He also holds a doctorate in education from the University of Rochester.

In 2000 O'Non became registered to sell securities. The Prescott Ten remember seeing O'Non working with DeMocker while he managed their accounts. O'Non remained at UBS after DeMocker was arrested, but left in August 2009 for Wells Fargo where she still manages accounts for Prescottians. But as all good black dahlia stories go, Barbara and Steven had more than a business relationship. They had an intimate personal relationship that began in 2001.

Barbara, an attractive, fit, fifty-ish, slender woman – DeMocker would have them no other way – with similar looks and build to the athletic murdered Carol Kennedy, may come out of this whole fiasco in great shape. However, she has not been granted immunity yet, as have two other murder trial witnesses. She was questioned during the first trial of DeMocker last year and will likely be called as a witness again in the retrial.

According to paperwork secured by this examiner, DeMocker held many personal bank and stock accounts, some with various six figure levels including a half-million dollar up front transition package that UBS gave to him to lure him across the street from A.G. Edwards in September 2004. Divorce papers claim he withdrew \$89,000 from a community IRA in March 2007 after his wife handed him the divorce papers.

One might think that if a stockbroker is accused of siphoning money that he might be in trouble with the Securities and Exchange Commission (S.E.C.) and may be sending money off shore. When this examiner first got the tip that DeMocker was being investigated, possibly by the feds, he filed a public records request and a Freedom of Information Act (FOIA) request with the F.B.I., the Internal Revenue Service (I.R.S.) and the S.E.C.

"A Securities and Exchange Commission investigation is much wider and more serious than a FINRA complaint," Byrne explained. A team of spokesmen made up of Roger Boudreaux, Joanne Morris and John Nester from the Washington, D.C. and Los Angeles offices of the S.E.C. ganged up to make it very clear that the S.E.C. is not investigating Steven DeMocker almost as if they were desperately trying to distance themselves from the affair, and in a final response to my FOIA request, Carl Rollins from the Washington office of the S.E.C. said, "We conducted a thorough search of the Commission's various systems of records, but did not locate or identify any information responsive to your request." An F.B.I. agent in the Phoenix office can find no active investigation on DeMocker. The I.R.S. has not yet responded.

HOW FINRA WORKS

FINRA oversees forty-five hundred brokerage firms, 160,000 branch offices and more than a half-million securities representatives like Steven DeMocker and has 3,000 employees and 20 regional offices.

In July 2007, when much of the country was bracing for credit default swaps, the recession, the drop in housing, and the collapse of financial giants "too big to fail," the S.E.C. was creating a new self regulatory agency. FINRA spokeswoman Michelle Ong explained that FINRA merged the National Association of Securities Dealers, Inc. with the New York Stock Exchange regulatory arm and was charged with regulation, enforcement and arbitration functions of the N.Y. Stock Exchange, the NASDAQ Stock Market, Inc., the American Stock Exchange, and the International Securities Exchange.

About the same month that FINRA was born, Steven DeMocker was having one of his best years, topping out at around \$13,000 a month income between proceeds gained in both the Prescott office of UBS Financial and his Phoenix – Colonnade area – office. But DeMocker's problem was his expenses. Wine, women, and song were costing him.

The FINRA complaint says, "We see a negative cash flow of \$17,204 per month."

FINRA spokeswoman Ong was reluctant to speak to specifics of this case but walked this reporter through a sophisticated FINRA website describing various complaints against DeMocker that include details of the murder investigation. Ong clarified that, "We are an independent regulator overseen by the S E C. We regulate all broker-dealers in the United States on behalf of the S E C. There are thousands of cases that go before independent arbitrators (non-FINRA employees) every month." The total amount of missing funds in this case is \$948,000 and the website, plus an email from FINRA, indicate the arbitration is not finished as UBS's Karina Byrne claims.

A June 2006 complaint filed against DeMocker by a Prescott woman was settled for "zero dollars" in January 2007.

DeMocker prevailed on another October 2008 claim, where the client said he, "would not have put one penny of his money at risk if he would have known what he was getting into."

A March 2008 claim for \$5,000 against DeMocker is still pending. And a separate claim from March 2008 was settled for \$225,000 according to the FINRA website.

DeMocker passed a general securities exam in 1995, state law securities exams in 1996 and 2005, but with all the trouble he is in, and with FINRA's current "rating" of DeMocker being "not currently registered," he may never work in the securities business again.

But tell that to the ten Prescott victims who want to recover money from DeMocker. One is a Prescott lawyer who sought to protect assets for his kids well into the future. He may be out between \$300,000 and \$400,000. And another man claims DeMocker and UBS owe him \$295,000.

FINRA documents in case number 10-03803 describe in detail how Steven DeMocker rose through the ranks of A.G. Edwards in Prescott, traded like a ball player off waivers to UBS in Prescott, and later became the lone suspect in a murder case who was desperate for cash.

Virginia Carol Kennedy was killed in July 2008 by seven blows to the head with a blunt force instrument, shattering her skull into 50 pieces, according to two autopsy experts. DeMocker maintains his innocence in the murder trial, which is due to re-start soon. He remains in jail on \$1 million cash bond.

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Bill Williams, Phoenix Headlines Examiner

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